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18 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
19 SAN FRANCISCO DIVISION

20 AMERICAN FEDERATION OF  
21 GOVERNMENT EMPLOYEES, AFL-CIO,  
et al.,

22 Plaintiffs,

23 v.

24 DONALD J. TRUMP, in his official capacity  
25 as President of the United States, et al.,

26 Defendants.  
27  
28

Case No. 3:25-cv-03698-SI

**PLAINTIFFS' MOTION FOR AN ORDER  
REQUIRING PRODUCTION OF  
ADMINISTRATIVE RECORD(S)**

1 Under this Court’s Civil Local Rule 16-5, the deadline for Defendants to serve and file the  
2 administrative record (“AR”) with respect to all of Plaintiffs’ Administrative Procedure Act  
3 (“APA”) claims was July 28, 2025. Defendants did not meet that deadline or move for relief from  
4 that deadline. Instead, Defendants have taken the position (1) that the Local Rule does not require  
5 production of an AR where Defendants have moved to dismiss and (2) that Defendants cannot  
6 assemble an AR due to purported factual and legal questions regarding the existence of final  
7 agency action. ECF 226 (Joint Case Management Statement) at 7. As Plaintiffs explain below,  
8 these points lack merit, and indeed, reinforce the need for production of the record in this case.  
9 Plaintiffs therefore respectfully request an order requiring the swift production and filing of the AR  
10 with respect to the actions challenged by Plaintiffs under the APA.”).

11 To foreclose any further dispute or debate as to what remains at issue and subject to  
12 Plaintiffs’ APA claims, Plaintiffs have identified the agency actions, at a minimum, for which an  
13 AR must be produced below. Finally, as Plaintiffs have previously explained, exigent  
14 circumstances, including Defendants’ ongoing and imminent implementation of unlawful actions,  
15 provide good reason to avoid any further delays by Defendants in producing documents pertinent  
16 to the agency action challenged here. Plaintiffs therefore request that Defendants be provided with  
17 a short compliance deadline. Plaintiffs were unable to resolve this dispute (both before and after  
18 the deadline) and understand that Defendants oppose this motion.

### 19 DISCUSSION

20 Plaintiffs bring claims pursuant to the APA against the Office of Management and Budget  
21 (“OMB”), Office of Personnel Management (“OPM”), Department of Government Efficiency  
22 (“DOGE”), and Federal Agency Defendants (in addition to claims regarding ultra vires action).  
23 ECF 1, 100; *see also* ECF 214, 228. Plaintiffs do not dispute that these APA claims are typically  
24 reviewed on an administrative record, triggering Civil Local Rule 16-5. Nor do Defendants: “Any  
25 such APA claim would need to be adjudicated based on the administrative record.” ECF 222.  
26 Local Rule 16-5 provides Defendants 90 days from the date of service of a complaint to produce  
27 such a record. In this case, that deadline was July 28, 2025. ECF 25 (April 29, 2025 proof of  
28 service of summons and complaint). Defendants’ failure to meet the July 28, 2025 deadline

1 violated the plain language of that rule.

2 1. This Court should reject Defendants' position that Local Rule 16-5 should be  
3 construed to permit a Defendant to avoid production of an AR by filing a motion to dismiss.  
4 Nothing in the rule expressly states that cases in which a Defendant moves to dismiss are an  
5 exception to production. Defendants point to the reference to filing and serving the AR along with  
6 an "answer" as the basis for their delay (ER 226 at 7), but that argument is inconsistent with both  
7 the general practice of this Court not to stay discovery pending motions to dismiss, and this Court's  
8 specific orders rejecting a stay of discovery pending resolution of Defendants' motion. ECF 214,  
9 228. Even if there were any ambiguity in the language of the rule, this Court has the authority to  
10 require production of the record. There is no more valid reason to stay production of an AR  
11 pending resolution of Defendants' motion to dismiss than to stay discovery on Plaintiffs' ultra vires  
12 claims, and this Court has now already rejected that argument, twice. As with discovery, there is  
13 very good cause in this case, on the established record of Defendants' ongoing and imminent  
14 actions to implement the Executive Order and OMB, OPM, and DOGE approvals and directives,  
15 and ARRs at issue, not to delay production of the record with respect to Plaintiffs' APA claims  
16 any further.

17 This Court should therefore conclude that Defendants' filing of a motion to dismiss rather  
18 than an answer does not relieve them of the obligation to serve and file the administrative record  
19 within 90 days of service.

20 2. Defendants have taken the position that they cannot comply with the AR deadline  
21 because Plaintiffs' claims "do[] not identify any distinct agency action and encompass[] many  
22 potential actions that have not even taken place (and might not take place)." ECF 226 at 7-8  
23 (claiming impossibility given scope of Plaintiffs' claims). That there may be multiple actions  
24 taken by defendant agencies does not insulate Defendants from judicial review. *See New York v.*  
25 *Trump*, 133 F.4th 51, 68 (1st Cir. 2025) ("[W]e are not aware of any supporting authority for the  
26 proposition that the APA bars a plaintiff from challenging a number of discrete final agency  
27 actions all at once.").

28 Moreover, there are specific actions challenged by Plaintiffs that this Court and the Ninth  
PLAINTIFFS' MOTION FOR PRODUCTION OF ADMINISTRATIVE RECORD, No. 3:25-cv-03698-SI  
2

1 Circuit have already ruled are final agency actions—the OMB/OPM Memorandum, and any  
2 OMB/OPM approval of ARRs—for which Defendants were clearly obligated to produce an AR,  
3 and yet did not attempt to comply with the deadline for production. ECF 124 at 42-43; *AFGE v.*  
4 *Trump*, 139 F.4th 1020, 1038-39 (9th Cir. 2025). Any claim of confusion regarding the nature of  
5 Plaintiffs’ claims challenging these actions by OMB and OPM is disingenuous. Nor is there any  
6 mystery as to the nature of Plaintiffs’ remaining claims, particularly in light of this Court’s recent  
7 orders addressing the impact of the Supreme Court stay order on those claims (ECF 214, 228):  
8 Plaintiffs challenge the actions that Defendants, including OMB, OPM, DOGE, and the Federal  
9 Agency Defendants, have decided to take and have actually taken to implement Executive Order  
10 14210, including approvals of ARRs, and agency actions implementing those approved ARRs.  
11 Information in possession of Defendants themselves, as to what actions have or have not been  
12 approved, decided upon, or implemented with respect to the Executive Order and ARRs, should  
13 dispel any claimed uncertainty about the nature of those actions.<sup>1</sup>

14 But to speed things along, Plaintiffs identify the following agency actions for which an AR  
15 should be produced, *at a minimum*: the OMB/OPM Memorandum;<sup>2</sup> any OMB/OPM approval,  
16 whether formal or informal, of a Federal Agency Defendant ARR (including but not limited to the  
17 ARRs pertaining to the 31 RIFS at 10 *defendant* agencies referenced in Defendants’ appellate  
18 filings, *see* ECF 228); any OMB, OPM, or DOGE directive to any Federal Agency Defendants  
19 regarding the implementation of Executive Order 14210 including: the closure of programs or  
20 offices (as the President characterized such orders: “all agency initiatives, components, or  
21

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22 <sup>1</sup> Defendants persist in feigning ignorance before this Court regarding what has or has not been  
23 approved by submitting declarations from individuals who work for OMB or OPM, rather than the  
24 Federal Defendant Agencies, who possess information regarding the actions they have submitted for  
25 approval and that have been approved, and have been implemented (ECF 224-1, 208-1, 141-1).  
When forced, those agency declarants (ECF 165) have revealed facts that support Plaintiffs.

26 <sup>2</sup> The Supreme Court granted a stay predicated on an initial assessment that the Memorandum is  
27 “likely” to be lawful. But that statement did not reflect consideration of Plaintiffs’ APA claim that  
28 actions by OMB and OPM were arbitrary and capricious, since this Court did not rely on that claim  
in its preliminary injunction order. ECF 124 at 44. In any case, the Supreme Court’s stay decision  
was not a final merits ruling, and an emergency stay order does not foreclose discovery on a pending  
claim, or the considered and reasoned assessment on a full and complete record.

1 operations that my Administration suspends or closes”, ECF 371-1, Ex. A at 2) or the number,  
2 amount or specific positions to eliminate for purposes of “workforce reduction”; or any Federal  
3 Agency Defendant action taken to date to implement any ARRP, including but not limited to RIFs,  
4 or the closure of offices, programs and functions.

5 The actions known to Plaintiffs to have been approved and taken to date to implement  
6 Executive Order 14210 and the ARRPs at Federal Agency Defendants include RIF notices issued  
7 prior to the Court’s May 9 TRO at the following agencies: HHS, HUD, Labor, State, AmeriCorps,  
8 GSA, and SBA. ECF 85 at 8. (Plaintiffs therefore understand, on these facts, some version of the  
9 ARRPs at these agencies were in fact approved). And, subsequent to the Supreme Court’s stay  
10 order: the implementation of agency reorganization and execution of prior RIF notices separating  
11 employees at HHS; the implementation of agency reorganization and RIF of thousands of  
12 employees of the State Department; the reorganization and RIF of employees of EPA; the  
13 reorganization of USDA; and the RIF of employees at the National Science Foundation.

14 3. The requirement that the federal government disclose the administrative record to  
15 permit proper judicial review is a bedrock principle of administrative law:

16 [I]n order to permit meaningful judicial review, an agency must “disclose the basis”  
17 of its action. *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 167–169,  
18 83 S.Ct. 239, 9 L.Ed.2d 207 (1962) (internal quotation marks omitted); *see also SEC*  
19 *v. Chenery Corp.*, 318 U.S. 80, 94, 63 S.Ct. 454, 87 L.Ed. 626 (1943) (“[T]he  
orderly functioning of the process of review requires that the grounds upon which  
the administrative agency acted be clearly disclosed and adequately sustained.”).

20 *Dep’t of Com. v. New York*, 588 U.S. 752, 780 (2019). As this Court has previously concluded,  
21 Defendants’ objections to producing factual information regarding their actions rest on self-serving  
22 arguments prematurely construing the facts and law in their favor. ECF 228 at 5 (“Much of what  
23 defendants argue puts the cart before the horse. They essentially urge that plaintiffs cannot obtain  
24 the discovery they seek because plaintiffs have not yet proven their case. What plaintiffs seek to  
25 prove their case is solely within defendants’ possession, and yet defendants seek to keep this  
26 information secret.”). Defendants’ arguments that the Court should simply adopt their version of  
27 the facts without allowing plaintiffs to review the factual record is not a persuasive basis to deny  
28 the prompt production of a required administrative record, a record that will facilitate the Court’s

1 ability to assess the legality of Defendants’ actions.

2 4. This Court has already decided that documents such as the ARRP, and  
3 communications between OMB, OPM, DOGE and Federal Agency Defendants will help shed light  
4 on the facts and, ultimately, Plaintiffs’ claims. ECF 214, 228. The Court’s conclusions apply  
5 equally to an AR that would contain those documents. *Cf. Swedish Am. Hosp. v. Sebelius*, 691  
6 F.Supp.2d 80, 88 (D.D.C. 2010) (denying motion to dismiss and granting motion to compel  
7 production of the administrative record because, “[w]ithout the administrative record, the court is  
8 unable” to assess whether agency action is arbitrary and capricious); *Hamal v. U.S. Dep’t of*  
9 *Homeland Sec.*, No. CV 19-2534, 2020 WL 2934954, at \*4 (D.D.C. June 3, 2020) (denying motion  
10 to dismiss because, “without fully reviewing the entire administrative record, it would be  
11 premature to declare that the agency acted reasonably”). This is all the more true where, as here,  
12 Defendants profess to be eschewing factual representations about their actions (ECF 117), yet  
13 persist in making factual representations to the Court regarding OMB/OPM approvals (or lack  
14 thereof), and the lack of final agency decisions and actions.

15 5. A short deadline for production is appropriate for several reasons.

16 a. Plaintiffs filed their complaint months ago, on April 28, 2025, and Defendants have been  
17 on notice of the deadline set forth in the Local Rules for months.

18 b. Defendants’ non-compliance is part of an established pattern to prevent Plaintiffs and this  
19 Court from accessing the facts regarding Defendants’ actions implementing Executive Order  
20 14210. As this Court has now repeatedly recognized, the “the need for accurate fact-finding in this  
21 litigation” is significant, and is underscored by Defendants’ attempt to shield their actions from  
22 judicial review. ECF 214 at 7; ECF 228 at 3; ECF 232 at 2. And, that need is only heightened by  
23 the recent revelation that Defendants’ affirmative factual representations to the Supreme Court and  
24 Ninth Circuit were not, in fact, accurate. ECF 228, 232.

25 c. As Plaintiffs have previously established, Defendants’ implementation of the Executive  
26 Order through agency actions challenged as unlawful is ongoing. ECF 176. In the context of  
27 ongoing and imminent action implementing the Executive Order directing agencies to downsize  
28 and dismantle the federal government, the Court should not countenance Defendants’ attempts to

1 tie plaintiffs' hands in presenting to the Court the case for any further injunctive relief warranted by  
2 law.

3 d. Finally, it is fair to anticipate, given Defendants' factual denials to date regarding the  
4 approval and implementation of actions pursuant to the Executive Order, that there will be disputes  
5 with respect to the content of any AR(s) that Defendants produce. Good cause exists to move  
6 matters forward quickly, so as to avoid further delay.

7  
8 **CONCLUSION**

9 For all the foregoing reasons, Plaintiffs respectfully request that this Court order  
10 Defendants to produce the Administrative Record of agency action subject to Plaintiffs' claims in  
11 this litigation, including but not limited to: the OMB/OPM Memorandum; any OMB/OPM  
12 approval, either formally or informally, of any Federal Agency Defendant ARRP; any OMB, OPM,  
13 or DOGE order to any Federal Agency Defendants regarding the implementation of Executive  
14 Order 14210 including but not limited to directives with respect to the closure of programs or  
15 offices, or elimination of positions, or number or amount of positions to reduce at any Federal  
16 Agency Defendants; and Federal Agency Defendants' actions taken to implement any ARRP,  
17 including but not limited to RIFs, or the closure of offices, programs and functions.

18  
19 Respectfully submitted,

20  
21 DATED: July 30, 2025

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